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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,189

11/03/2003

David James Bennetts

Bennetts 2-5

3986

7590

09/21/2006

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EXAMINER

EKONG, EMEM

ART UNIT

PAPER NUMBER

2617

DATE MAILED: 09/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/700,189	BENNETTS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	EMEM EKONG	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 7/20/06 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1, 2, 4-7, and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Japanese Patent No. 2002314657 to Otsuka.

**Regarding claim 1**, Harris discloses a portable electronic communication apparatus including a user-interface having at least three modes of operation (col. 2 lines 40-42), the apparatus including: first and second housing members each having a first surface and an opposite second surface (col. 3 lines 9-20), the user interface being provided at the first surface of the first housing member; and a connecting mechanism for movably connecting the first and second housing members, wherein the position of the first and second members relative to each other determines a mode of operation of the apparatus such that (col. 2 lines 40-48, and col. 3 lines 9-25), when the first and second housing members are positioned together in a first closed position such that the second surface of the first member is closed toward one surface of the other member such that the user interface is accessible, the apparatus is in a second first mode of operation of the user interface (col. 2 lines 48-50), and when the first and second housing members are positioned together in a second closed position such that the first surface of the first member is closed toward one surface of the other member, the apparatus is in a second mode of operation of the user-interface (col. 2 lines 45-48, and col. 12 lines 40-45).

However, Harris fails to disclose when the first and second housing members are positioned together in a second closed position such that the first surface of the first

member is closed toward one surface of the other member such that the user interface is inaccessible.

Otsuka discloses when the first and second housing members are positioned together in a second closed position such that the first surface of the first member is closed toward one surface of the other member such that the user interface is inaccessible (see figures 7 and 10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Harris, and have the first and second housing members positioned together in a second closed position such that the first surface of the first member is closed toward one surface of the other member such that the user interface is inaccessible as disclosed by Otsuka for the purpose of changing modes when it is in a closed position.

**Regarding claim 2**, the combination of Harris and Otsuka discloses a portable electronic communication apparatus according to claim 1 wherein, when the first and second members are positioned apart from each other in an open position, the apparatus is in a third mode of operation of the user-interface in which the user-interface is active (col. 2 lines 48-51, when housing are detached, the device operates in another mode).

**Regarding claim 4**, the combination of Harris and Otsuka discloses a portable electronic communication apparatus according to claim 2 wherein the user-interface is a display (see figure 1, and col. 3 line 18).

**Regarding claim 5**, the combination of Harris and Otsuka discloses a portable

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electronic communication device according to claim 4 wherein the apparatus comprises one and only one display (see figure 1, col. 1 lines 53-63, and col. 5 lines 45-59).

**Regarding claims 6 and 7**, the combination of Harris and Otsuka discloses a portable electronic communication apparatus according to claim 1 further comprising a second user interface at the first surface of the second member (co. 3 line 12, and col. 6 lines 13-24).

**Regarding claim 9**, the combination of Harris and Otsuka discloses a portable electronic communication apparatus according to claim 1 wherein the first mode or operation is a fully operational mode of operation (col. 9 lines 6-22).

**Regarding claims 10-12**, the combination of Harris and Otsuka discloses a portable electronic communication apparatus according to claim 9 wherein the second mode of operation is a standby mode of operation (col. 8 lines 1-35, and col. 11 lines 8-57, it is inherent that in the note taking mode the phone is switched off

**Regarding claims 13 and 14**, the combination of Harris and Otsuka discloses a portable electronic communication device according to claim 1, wherein the apparatus is a mobile telephone (col. 1 lines 46-47, and col. 57-65).

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Otsuka, and further in view of US Patent No. 6549789 B1 to Kfoury.

Regarding claims 3, the combination of Harris and Otsuka discloses a portable electronic communication device according to claim 2, however, the combination fails to disclose wherein in the second mode of operation, the user-interface being inactive.

Kfoury discloses the user-interface is inactive (col. 5 lines 42-44, and col. 5 lines 51-52).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Harris, and have the user-interface inactive as disclosed by Kfoury for the purpose of using different modes with the apparatus.

7. Claim 17 and 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka in view of Harris.

**Regarding claim 17**, Otsuka discloses a portable communication device comprising a first housing and a second housing (pars. 1-2), each housing comprising a first surface and a second, opposing surface, said first housing including a first user interface disposed in the first surface thereof, said device further comprising a pivot mechanism that permits the first and second housings to be pivoted between a first open position in which the first and second housings are arranged generally end-to-end with each other (see figures 8 and 9, and pars. 2 and 3) and a first closed position in which the second surfaces of the first and second housings, respectively, face each other such that, in the first closed position, the first user interface is accessible, a second closed position in which the first surfaces of the first and second housings, respectively, face each other such that, in the second closed position, the first user interface is inaccessible (see figure 6, pars. 8-13 and 26-27).

However, Otsuka fails to disclose the device is in a first operational mode when in the first open position, in a second operational mode when in the first closed position and in a third operational mode when in the second closed position, means for automatically detecting when the device is in the first open position, the first closed position, or the second closed position, and means for automatically entering the corresponding mode responsive to the means for detecting.

Harris discloses the device is in a first operational mode when in the first open position, in a second operational mode when in the first closed position and in a third operational mode when in the second closed position, means for automatically detecting when the device is in the first open position, the first closed position, or the second closed position, and means for automatically entering the corresponding mode responsive to the means for detecting (col. 6 lines 3-24, col. 6 lines 50-67, col. 7 line 23-col. 8 line 35, col. 9 lines 5-35, it is inherent that detecting and sensing is done of opening and closing positions of housing by i.e. latch, switch, contact, sensor in order for corresponding mode changes to occur).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the invention of Otsuka, and have the device is in a first operational mode when in the first open position, in a second operational mode when in the first closed position and in a third operational mode when in the second closed position, means for automatically detecting when the device is in the first open position, the first closed position, or the second closed position, and means for automatically



entering the corresponding mode responsive to the means for detecting for the purpose of detecting opening and closing of housing for mode change of apparatus.

Regarding claims 27-29, the combination of Otsuka and Harris discloses a portable communication device according to claim 17, further comprising means for enabling a user of the device to select at least the second and third operational modes, wherein the first user interface is a display and is active in the first and second operational modes and inactive in the third operational mode, further comprising a second user interface disposed in the first surface of the second housing such that, in the first closed position, the second user interface is accessible, and, in the second closed position, the second user interface is inaccessible (Harris, col. 12 lines 38-50, the user of apparatus selectively changes the mode of the apparatus by attaching and detaching in different orientations), (Otsuka, see figure 7).

8. Claims 28, and 33-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otsuka in view of Harris and further in view of Kfoury.

Regarding claims 28, and 33-35, the combination of Otsuka and Harris discloses a portable communication device according to claims 17, and 29, wherein the first user interface is a display and is active in the first and second operational modes and inactive in the third operational mode.

However, the combination fails to disclose wherein the second user interface is a keypad and is active in the first operational mode and inactive in the second operational

mode, wherein the first and second user interfaces are inactive in the third operational mode.

Kfoury discloses an apparatus with multiple modes of operation, selectively adapted to operate in an inactive mode, active mode or a combination (col.3 lines 14-16, col. 5 lines 42-45 and claim 17).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the combination, and have the second user interface is a keypad and is active in the first operational mode and inactive in the second operational mode, wherein the first and second user interfaces are inactive in the third operational mode as disclosed by Kfoury for the purpose of operating an apparatus in different modes.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to the apparatus:

U.S. Pat. No. 6434371 B1 to Claxton

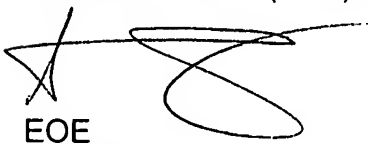
U.S. Pub. No. 20040203525 A1 to Gillete et al.

U.S. Pat. No. 6,839,576 B2 to Aagaard et al..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EMEM EKONG whose telephone number is 571 272 8129. The examiner can normally be reached on 8-5 Mon-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester Kincaid can be reached on 571 272 7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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9/15/06



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